



House of Representatives

File No. 717

General Assembly

February Session, 2014

(Reprint of File No. 464)

Substitute House Bill No. 5085
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
April 30, 2014

**AN ACT CONCERNING SHELLFISH GROUNDS LEASES, THE
STEALING OF SHELLFISH, SHELLFISH RECALLS AND THE TAKING
OF EASTERN OYSTERS.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Subsection (a) of section 26-194 of the 2014 supplement to
2 the general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective from passage*):

4 (a) Except as provided in subsection (e) of this section, the
5 Commissioner of Agriculture may lease in the name of the state, under
6 such regulations as the commissioner may prescribe and for a period
7 not longer than ten years, all shellfish areas that have been conveyed to
8 the state or placed under state jurisdiction by the town of West Haven
9 and any undesignated grounds, within the exclusive jurisdiction of the
10 state, for the purpose of planting and cultivating shellfish. The
11 authority herein conferred shall include the Cormell Reef, Portchester,
12 Great Captain's Island, Field Point and Greenwich Point natural beds
13 as located and described in section 3295 of the general statutes,
14 revision of 1918. Any person desiring to lease grounds for such

15 purpose shall make application in writing to the commissioner and all
16 grounds leased by authority of the provisions of this section shall be
17 leased to the highest responsible bidder, for a minimum fee of four
18 dollars per acre. Such lease or lease renewal shall require the lessee to
19 make a good faith effort to cultivate and harvest shellfish from the
20 leased area. Such lease or lease renewal shall prohibit the lessee from
21 entering a contract whereby the lessee agrees not to cultivate and
22 harvest shellfish for any period of time. No lessee may enter an
23 agreement with a third party that will prevent the lessee from carrying
24 out the lessee's obligations under the lease unless the Department of
25 Agriculture and the Attorney General have approved such agreement.
26 The form of such application and lease shall be approved by the
27 Attorney General, and all such leases shall be recorded in the records
28 of the commissioner. No lease shall be granted to a resident of a state
29 which does not lease shellfish grounds to residents of this state, except
30 that any nonresident who was granted a lease on or before October 1,
31 1985, may, upon the expiration of such lease, apply for a renewal or
32 further lease as provided in this section. The commissioner shall grant
33 any such lease to nonresidents upon the same terms and conditions as
34 to residents of this state. Any lessee or holder of shellfish grounds, on
35 the expiration of any lease thereof which has been or which may be
36 granted, having fulfilled all of such lessee's or holder's obligations
37 under the lease shall, upon application to the commissioner, have
38 preference in the reletting of such ground for a like term to that
39 granted in the original lease, excluding the rental fee, which shall not
40 be less than the minimum fee per acre as provided in this subsection. A
41 lease renewal shall not be granted if the applicant is in arrears for rent
42 on the original lease of such grounds. The commissioner may deny the
43 renewal of any such lease entered into or renewed after the effective
44 date of this section, upon the provision of thirty days' advance notice
45 of such denial to the lessee or holder of such shellfish grounds, and
46 any sublessee of such shellfish grounds, if the lessee or holder of
47 shellfish grounds is: (1) In default in the payment of rent for any
48 shellfish grounds of this state, or (2) the principal or corporate officer
49 of any business entity that holds such a lease of shellfish grounds in

50 this state and such business entity is in default in the payment of rent
51 for such lease, provided the commissioner shall grant a one-year
52 renewal of a lease for shellfish grounds if such lease is not in default in
53 the payment of rent. The commissioner shall grant such a one-year
54 renewal for such a lease, provided the lessee is otherwise in
55 compliance with said lease, not more than three times. Any request for
56 such a one-year renewal for such a lease may be denied if the lessee is
57 in default on the payment of rent for any such previous renewal on
58 said lease. The commissioner, after denying renewal of any such lease,
59 shall, upon the expiration of such lease, send notification of the
60 termination of such lease to all lessees and sublessees of such lease, by
61 means of first class mail. Such notice shall indicate that any such
62 sublessee shall have ninety days from the postmark date for such
63 notice to vacate the subleased area. Such application for such renewal
64 or further lease shall be granted without notice or advertisement of the
65 pendency thereof; provided no renewal or further lease of such ground
66 shall be granted when the commissioner, for cause, ceases to lease such
67 ground for shellfish culture. All assignments or transfers of leases shall
68 be subject to the approval of the commissioner and shall be recorded in
69 his records. Any person who interferes with, annoys or molests
70 another in the enjoyment of any lease authorized by the provisions of
71 this section shall be subject to the penalties provided in section 26-237.
72 The provisions of sections 26-212, 26-215 and 26-232 shall not apply to
73 any shellfish grounds leased pursuant to the provisions of this section.

74 Sec. 2. Section 26-225 of the general statutes is repealed and the
75 following is substituted in lieu thereof (*Effective from passage*):

76 Any person who, in the daytime, unlawfully takes and carries away
77 any [oysters] shellfish lawfully planted or cultivated in any waters, or
78 any [oysters] shellfish being on any place designated for the planting
79 or cultivation of [oysters] shellfish, shall be fined not more than three
80 hundred dollars or imprisoned not more than one year; and, if such
81 offense is committed in the night season, [he] such person shall be
82 fined not more than five hundred dollars or imprisoned not more than
83 one year.

84 Sec. 3. Section 26-226 of the general statutes is repealed and the
85 following is substituted in lieu thereof (*Effective from passage*):

86 Any person who wilfully injures any [oyster] shellfish enclosure
87 legally designated, marked out and enclosed or removes any buoys or
88 stakes used to mark out any [oyster] shellfish ground, or who takes
89 any shells from such enclosure, shall (1) for a first offense, be fined not
90 more than two hundred fifty dollars, and (2) for any subsequent
91 offense, be guilty of a class C misdemeanor.

92 Sec. 4. Section 26-192f of the general statutes is repealed and the
93 following is substituted in lieu thereof (*Effective from passage*):

94 Any person, firm or corporation (1) harvesting or taking shellfish
95 from an area closed and posted by the Department of Agriculture
96 against the removal of shellfish, except as provided in section 26-192h,
97 or an area closed by commercial shellfish transplant license issuance or
98 by order of the local director of health with the approval of the
99 department, (2) misusing any shipping tag or license in violation of
100 section 26-192c, (3) mislabeling shellfish shipments or deliveries with
101 any false information, (4) failing to identify shellfish shipments or
102 deliveries in accordance with the National Shellfish Sanitation
103 Program Model Ordinance, as amended from time to time, (5)
104 harvesting shellfish from undesignated grounds, [or] (6) harvesting
105 shellfish from designated grounds not listed on a license issued by the
106 Department of Agriculture to such person, firm or corporation, or (7)
107 failing to initiate a voluntary or mandated recall of all implicated
108 shellfish products in accordance with procedures that are consistent
109 with the Recall Enforcement Policy of 21 CFR 7 shall be fined (A) one
110 thousand dollars, or (B) three times the market value of any shellfish
111 taken, based on the quantity and type involved in the violation if such
112 amount is greater than one thousand dollars, or imprisoned not more
113 than one year. The Commissioner of Agriculture may revoke any
114 license issued by said commissioner for up to sixty days for the second
115 violation of this section within six months and up to ninety days for a
116 third violation of this section within nine months. Any person who

117 defaces or removes a sign posted by the Department of Agriculture in
 118 accordance with the provisions of section 26-192e shall be fined not
 119 more than five hundred dollars or imprisoned not more than six
 120 months. The provisions of this section are in addition to and in no way
 121 derogate any other enforcement provisions or penalties contained in
 122 any other section of the general statutes.

123 Sec. 5. Section 26-234b of the general statutes is repealed and the
 124 following is substituted in lieu thereof (*Effective July 1, 2014*):

125 No person [may] shall take eastern oysters (*Crassostrea virginica*)
 126 from the waters of this state [which] that are less than [three] two and
 127 three-quarters inches long or [which] that are otherwise not ready for
 128 harvest, as determined by the Commissioner of Agriculture, except
 129 that (1) ten per cent of any such take may consist of oysters that are
 130 less than two and three-quarters inches long but not less than two and
 131 one-half inches long, and (2) the taking of such oysters for sale,
 132 transplant and relay for aquaculture purposes within the waters of the
 133 state shall not be prohibited. For purposes of determining compliance
 134 with the size requirements established pursuant to this section, the
 135 Department of Agriculture shall conduct any applicable inspection and
 136 measurements of eastern oysters after such oysters are processed and
 137 packaged for the purpose of sale or distribution. The Commissioner of
 138 Agriculture may adopt regulations, in accordance with the provisions
 139 of chapter 54, to carry out the purposes of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	26-194(a)
Sec. 2	<i>from passage</i>	26-225
Sec. 3	<i>from passage</i>	26-226
Sec. 4	<i>from passage</i>	26-192f
Sec. 5	<i>July 1, 2014</i>	26-234b

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Department of Agriculture	GF - Revenue Loss	Potential	Potential
Judicial Dept. ¹	GF - Revenue Gain	Potential	Potential

Municipal Impact: None

Explanation

The bill allows the Department of Agriculture (DoAg) to deny a shellfish grounds lease renewal if a lessee is in default of rent payments under certain conditions. This may result in a revenue loss to DoAg. There are currently 42 licensed shellfish harvesters that generate \$861,815 of revenue on 29,610 acres of shellfish beds.

Additionally, the bill (1) extends penalties for stealing oysters and injuring oyster enclosures to stealing any shellfish or injuring any shellfish enclosure and (2) subjects people or companies to a penalty for failing to issue a shellfish recall when warranted. To the extent penalties are issued for violations, there may be a revenue gain to the state. There is currently no revenue collected for these purposes.

House "A" replaces the underlying bill with the impact described above.

The Out Years

¹ Statutory violations are subject to Infractions Bureau procedures which allow the accused to pay the fine by mail without making a court appearance.

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of shellfish beds in default and the number of violations that occur.

OLR Bill Analysis**sHB 5085 (as amended by House "A")******AN ACT CONCERNING SHELLFISH GROUNDS LEASES BY THE DEPARTMENT OF AGRICULTURE.*****SUMMARY:**

This bill makes various changes to the statutes relating to shellfish. It:

1. allows the agriculture commissioner, with 30 days' notice, to deny a shellfish grounds lease renewal if a lessee is in default in paying rent on any Connecticut shellfish grounds, under certain conditions;
2. requires the commissioner to notify lessees and sublessees of a shellfish grounds lease renewal denial and give them 90 days to vacate the area;
3. extends the penalties for stealing oysters and injuring oyster enclosures to stealing any shellfish or injuring any shellfish enclosure;
4. subjects people or companies to a penalty for failing to initiate a shellfish recall when warranted; and
5. reduces the minimum size, from three to 2.75 inches long, of eastern oysters that can be taken from Connecticut waters, and allows up to 10% of a take to include oysters between 2.5 and 2.75 inches long.

*House Amendment "A" adds provisions regarding shellfish grounds lease renewals. Specifically, it requires the agriculture commissioner to (1) grant a one-year lease renewal up to three times if

the lessee is not in default in paying rent on the specific lease in question and (2) give lessees and sublessees notice of a lease renewal denial by first class mail and allow them 90 days to vacate the area. With respect to the size of eastern oysters that may be taken from Connecticut waters, the amendment allows up to 10%, instead of 5%, of a take to include oysters between 2.5 and 2.75 inches long. It also requires the Department of Agriculture, when determining compliance with the oyster size requirements, to inspect and measure oysters after they are processed and packaged for sale or distribution.

EFFECTIVE DATE: Upon passage

§ 1 — SHELLFISH GROUNDS LEASES

By law, the agriculture commissioner leases state shellfish grounds to shellfish producers to farm underwater beds. When a lease expires, the lessee can apply for a lease renewal. The commissioner cannot renew a lease if the applicant is in arrears for rent for the ground covered by the original lease.

The bill allows the commissioner, after 30 days' notice to the lessee and sublessees, to deny a lease renewal application if the lessee is (1) in default on rent for any Connecticut shellfish grounds or (2) the principal or corporate officer of a business entity holding a lease and that entity is in default on rent for the lease. This denial option applies to shellfish grounds leases entered into or renewed after the bill's effective date.

But, under the bill, the commissioner must grant a one-year renewal of a shellfish grounds lease if that lease is not in default on rent. He must do this up to three times if the lessee is otherwise in compliance with the lease. The commissioner may deny a one-year renewal if the lessee is in default on rent for any previous renewal of that lease.

If the commissioner denies a lease renewal, the bill requires him to give lessees and sublessees (1) notice of the termination by first class mail and (2) 90 days from the notice postmark date to vacate the area.

§§ 2 & 3 — STEALING SHELLFISH AND INJURING SHELLFISH ENCLOSURES

The bill extends the penalty for stealing oysters to the theft of any shellfish. Under the bill, anyone who steals shellfish is subject to up to one year in prison or a fine of up to (1) \$300 if taken in the daytime or (2) \$500 if taken at night.

The bill also extends the penalty for wilfully injuring an oyster enclosure to anyone who wilfully injures any shellfish enclosure. Under the bill, anyone wilfully injuring a legally designated, marked shellfish enclosure; removing any buoys or stakes marking a shellfish ground; or taking shells from an enclosure is subject to a fine of up to \$250 for a first offense. Any subsequent offense is a class C misdemeanor, subject to a fine of up to \$500, up to three months in prison, or both.

§ 4 — SHELLFISH RECALLS

The bill subjects to a penalty a person, firm, or corporation who does not initiate a voluntary or mandated recall of “implicated shellfish products” in accordance with the federal Food, Drug, and Administration’s (FDA) Recall Enforcement Policy. In general, each person, firm, or corporation selling shellfish must, under federal law, have, and adhere to, a recall procedure when products make people ill or are reasonably likely to do so. The Department of Agriculture announces a recall and the affected people, firms, and corporations must initiate their recall procedure.

Under the bill, a person, firm, or corporation who fails to initiate a recall of implicated shellfish is subject to (1) a fine of \$1,000 or three times the market value of the affected shellfish, based on the quantity and type involved, whichever is greater, or (2) up to a year in prison. The agriculture commissioner may, in addition, revoke a department-issued license for up to (1) 60 days for a second violation within six months and (2) 90 days for a third violation within nine months. These penalties are in addition to other penalties the law authorizes.

§ 5 — SIZE OF EASTERN OYSTERS

This bill reduces the size, from three to 2.75 inches long, of eastern oysters that can be taken from Connecticut waters. It also allows up to 10% of a take to include oysters between 2.5 and 2.75 inches long. When determining compliance with the size requirements, the Department of Agriculture must inspect and measure oysters after they are processed and packaged for sale or distribution.

By law, oysters cannot be taken if the agriculture commissioner determines they are not ready for harvest, unless the oysters are for sale, transplant, and relay for aquaculture purposes within state waters. The law authorizes the commissioner to adopt implementing regulations.

Violators are subject to a fine of up to \$500, up to six months in prison, or both (CGS § 26-237).

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 22 Nay 5 (03/21/2014)